



# PUBLIC NOTICE

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## Actions Taken Under Cable Landing License Act

### Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 C.F.R. § 1.767(a))

By the Chief, Telecommunications and Analysis Division, International Bureau:

Pursuant to An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 C.F.R. § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules, 47 C.F.R. § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this public notice.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 C.F.R. § 1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://2001-2009.state.gov/r/pa/prs/ps/2001/6951.htm>.

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. Cable landing licensees should review carefully the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

SCL-AMD-20161012-00020

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DOCOMO PACIFIC, INC.

Amendment

Grant of Authority

Date of Action: 02/17/2017

DOCOMO Pacific, Inc. (DOCOMO Pacific) amends its application for a license to construct, land and operate within the United States, a non-common carrier fiber-optic submarine cable system connecting Guam with Saipan, Rota, and Tinian in the Commonwealth of the Northern Mariana Islands (CNMI) (the Atisa system). DOCOMO Pacific filed its application on March 2, 2016. File No. SCL-LIC-20160314-00008, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No. SCL-00180S (IB, April 20, 2016). Specifically, DOCOMO Pacific amends the application to include updated the landing point information for landings in Guam and Saipan, Rota, and Tinian in the CNMI.

The cable landing license application, as amended, is granted. See SCL-LIC-20160314-00008.

Submarine Cable Landing License

Grant of Authority

Date of Action: 02/17/2017

Acceptability for Filing Public Notice: Application filed by DOCOMO Pacific, Inc. for a license to construct, land and operate within the United States, a non-common carrier fiber-optic submarine cable system connecting Guam with Saipan, Rota, and Tinian in the Commonwealth of the Northern Mariana Islands (CNMI) (the Atisa system). The Application was placed on Public Notice on April 20, 2016. File No.

SCL-LIC-20160314-00008, Public Notice, Streamlined Submarine Cable Landing License Applications Accepted for Filing, Report No.

SCL-00180S (IB, April 20, 2016). PTI Pacifica, Inc. d/b/a IT&E (IT&E) filed comments on May 4, 2016, and supplemented its comments on May 10, 2016. DOCOMO Pacific, Inc. (DOCOMO Pacific) filed a reply on May 12, 2016 and an ex parte letter on May 30, 2016. Applicant amended its Application on October 12, 2016, to update the landing point information for the landings in Guam and Saipan, Rota, and Tinian in the CNMI. File No. SCL-AMD-20161012-00020. Applicant was granted Special Temporary Authority (STA) to construct, connect the end points, and test at its own risk those portions of the Atisa system in U.S. territory prior to receiving Commission authorization. File No. SCL-STA-20170209-00002.

The Application has been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules, 47 CFR §1.767(b), and consistent with procedures established with the Department of State. See Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Streamlined Procedures for Executive Branch Review of Submarine Cable Landing License Requests, State Department Media Note (Revised) (rel. Dec. 20, 2001) available at <http://www.state.gov/r/pa/prs/ps/2001/6951.htm>. The Department of Homeland Security (DHS) filed a Petition to Adopt Conditions to Authorizations and Licenses on February 16, 2017. DHS has no objection to the Commission approving authority to construct, land, and operate the Atisa system, provided that the Commission conditions its approval on the commitment of DOCOMO Pacific, Inc. to abide by the undertakings set forth in the February 15, 2017, Letter of Assurances from DOCOMO Pacific, Inc. to DHS.

Actions Taken: (1) Grant of Cable Landing License, as amended, to DOCOMO Pacific, Inc. for the purpose of constructing, landing and operating a private fiber-optic submarine cable network, the Atisa system, connecting Guam with Saipan, Rota, and Tinian in the CNMI; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition to Adopt Conditions to Authorizations and Licenses filed on February 16, 2017, by the Department of Homeland Security.

Licensee Information: The Applicant for the cable landing license for the Atisa system is DOCOMO Pacific, Inc. (DOCOMO Pacific).

DOCOMO Pacific is a Guam corporation, and is a direct, wholly-owned subsidiary of DOCOMO Guam Holdings, Inc. (DMGH), a Guam holding company, which, in turn, is 100% directly owned by NTT DOCOMO, Inc. (DOCOMO), a Japan telecommunications company. Nippon Telegraph and Telephone Corporation (NTT), a Japan corporation, holds a 63.32% direct equity interest and a 66.65% direct voting interest in DOCOMO. The Japanese Ministry of Finance, which owns 35.21% of NTT's shares, holds a 35.21% indirect equity interest and a 35.21% indirect voting interest in DOCOMO Pacific. The remainder of NTT's shares are publicly traded on the Tokyo Stock Exchange. No other person or entity holds a ten percent or greater ownership interest in DOCOMO Pacific.

Cable Design and Capacity: The Atisa system will have a design capacity of 4.8 terabits per second (Tbps) and will have a total length (trunks plus spurs) of approximately 279 kilometers. The Atisa system, along with associated cable landing stations, will consist of the following five segments: (1) Segment 1 will connect the existing cable station at Piti, Guam to the Rota branching unit, located off the coast of Rota, (2) Segment 2 will connect the Rota branching unit to a newly constructed cable landing station (by DOCOMO Pacific) located at Songsong Village Sasanlagu, Rota, (3) Segment 3 will connect the Rota branching unit to the Tinian branching unit, located off the coast of Tinian, (4) Segment 4 will connect the Tinian branching unit to a newly constructed cable landing station (by DOCOMO Pacific) located at Tachognya Beach, Tinian, and (5) Segment 5 will connect the Tinian branching unit to a preexisting structure owned by DOCOMO Pacific and located at Sugar Dock South, Saipan. Segment 5, with segments 1 and 3, will form the trunk between Guam and Saipan (Guam-Saipan express route) which will consist of three fiber pairs with an initial capacity of 100 gigabits per second (Gbps). The remaining three fiber pairs connecting the local routes (Guam-Rota, Guam-Tinian, Rota-Tinian, Rota-Saipan, and Tinian-Saipan) will have an initial capacity of 10 Gbps.

In its supplemental comments, IT&E, the licensee and operator of the existing fiber-optic submarine cable connecting Guam with islands in the CNMI (Mariana-Guam cable), states that it received two notices from the International Cable Protection Committee (ICPC) that DOCOMO Pacific is proposing to lay the Atisa system such that it would cross the Mariana-Guam submarine cable in two separate places on the ocean floor, which might compromise the integrity of the existing cable. IT&E Supplemental Comments at 1. IT&E states that it will object to the ICPC by separate letter, but wanted to alert the Commission as to this issue. Id. at 2. DOCOMO Pacific responds that it is working within the industry standards and procedures regarding cable crossings and that it has a strong incentive to implement the ICPC recommendations and minimize the risk of damage to the Mariana-Guam cable in order to protect the Atisa cable. DOCOMO Pacific May 30, 2016 letter at 1-3. We find that this is a commercial issue for which there are industry practices and should be resolved through appropriate industry committees and forums.

Ownership of the Cable System and Landing Points: (1) Tata Communications (America) Inc. (Tata) will own and operate the cable landing station located at Piti, Guam, (2) DOCOMO Pacific will enter into a long term lease with M.S. Villagomez, Inc. for land on which DOCOMO Pacific owns a preexisting structure that will serve as the cable landing station it will control and operate at Sugar Dock South, Saipan, (3) DOCOMO Pacific will enter into a long term land lease with the CNMI Government on which it will control and operate the planned cable landing station located at Sasanlagu, Rota, and (4) DOCOMO Pacific will enter into a long term land lease with the CNMI Government on which it will control and operate the planned cable landing station located at Tachognya Beach, Tinian.

Applicant requests a waiver of section 1.767(h)(1) of the rules so that Tata need not be a joint applicant for the Atisa cable landing license. See Application at 14. Section 1.767(h)(1) requires that "any entity that owns or controls a cable landing station in the United States" shall be an applicant for, and licensee on, a cable landing license. 47 C.F.R. § 1.767(h)(1). According to DOCOMO Pacific, Tata will not have the ability to affect significantly Atisa's operation, and it is not necessary for Tata to be a licensee to ensure compliance by DOCOMO Pacific with the Cable Landing License Act, the Commission's cable landing license rules, or the terms of any cable landing license. Id. DOCOMO Pacific states that it will enter into an agreement with Tata granting DOCOMO Pacific an IRU for Tata's beach manhole at Santos Park, Piti, and for conduit connecting the beach manhole with Tata's Piti, Guam cable landing station. Tata will also grant DOCOMO Pacific a long-term lease for collocation space in Tata's cable landing station for which DOCOMO Pacific will have exclusive control over and access to Atisa terminal equipment. Id. at 15. Finally, DOCOMO Pacific will retain operational authority over its Atisa facilities and provide direction to Tata in all matters relating to Atisa. Id.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. While Tata is the owner of the cable landing station where the Atisa cable system will land in Guam, we find that, based upon the agreements between DOCOMO Pacific and Tata described above, Tata will not have the ability to significantly affect the operation of the cable system. DOCOMO Pacific will retain effective operational authority and provide direction to Tata in all matters relating to the Guam landing station. Accordingly, we grant DOCOMO Pacific a waiver of section 1.767(h)(1) and do not require Tata to be on this Cable Landing License.

**Regulatory Status of the Cable:** DOCOMO Pacific proposes to operate the Atisa system on a non-common carrier basis. DOCOMO Pacific states Atisa will provide much needed competition on the Guam-CNMI route, and support the launch of access to bandwidth intensive services, support new economic activity in the CNMI economy, and provide more competitively priced, high speed connectivity that will benefit consumers. DOCOMO Pacific also states that it will not sell capacity indifferently to the public, but rather will sell capacity to retail, enterprise, and government customers in Guam and the CNMI pursuant to individually negotiated IRUs and capacity leases on terms tailored to their particular needs. See Application at 6-9.

In its comments, IT&E requests that the Commission "expressly confirm" that the proposed Atisa system and the services offered over the system be subject to the same regulatory treatment as IT&E's existing cable. See IT&E Comments at 2-3. In its reply, DOCOMO Pacific asserts that IT&E improperly seeks to expand the Atisa licensing proceeding to address its own regulatory status, and that neither the Cable Landing License Act nor the Commission's rules "provides for evaluation or reconsideration of the regulatory status of an existing submarine cable in a proceeding to license a new, competing cable." See DOCOMO Pacific Reply at 2. DOCOMO Pacific further claims that the Commission has rejected attempts to condition cable landing licenses to address matters beyond the scope of new, proposed cables, and that IT&E's request is beyond the scope of this proceeding for licensing Atisa. Id. at 2-3.

We find that the Applicant has provided information sufficient enough to demonstrate that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976)(NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration or Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67 (2000) (Cable Landing License Act NPRM). IT&E does not seek denial of the Atisa license application, but only asks that the Commission "expressly confirm" that the proposed Atisa system and the services offered over the system be subject to the same regulatory treatment as the Mariana-Guam cable. We find that IT&E's request is outside the scope of this proceeding, and if IT&E wants to change the regulatory classification of the Mariana-Guam cable from a common carrier to a non-common carrier licensed cable system, it may file a request, consistent with our private cable policy, see id., 15 FCC Rcd 20789, 20815-20818, paras. 62-67, to modify the cable landing license for that cable.

**Conditions and Requirements:** Applicant will comply with the routine conditions set out in 1.767(g)(1)-(14) of the Commission's rules, 47 CFR § 1.767 (g)(1)-(14), and with the requirements of section 1.768 of the Commission's rules, § 1.768 (Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier).

We grant the Petition to Adopt Conditions to Authorizations and Licenses (Petition) filed in this proceeding on February 16, 2017, by the Department of Homeland Security. Accordingly, we condition grant of the application on DOCOMO Pacific abiding by the commitments and undertakings contained in the February 15, 2017, letter from James W. Hofman, II, Chief Legal Officer, Docomo Pacific, Inc. to the Acting Assistant Secretary for Policy, DHS (2017 LOA). A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring this license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission. A copy of the Petition and the 2017 LOA are publicly available and may be viewed on the FCC website through the International Bureau Filing System (IBFS) by searching for SCL-LIC-20160314-00008 and accessing "Other filings related to this application" from the Document Viewing area.